

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 10/15/14

PHISH, INC.,

: Civil Action

Plaintiff,

: No. 14 Civ. 4537 (SHS)

vs.

NICHOLAS MALLOU; AMALIE MATERA;
TAN NGUYEN (a/k/a NAM); ANNA E. LONG;
CASEY LEE PROFITT; VARIOUS JOHN
DOES, JANE DOES AND XYZ COMPANIES,

Defendants.

X

AMENDED PRELIMINARY INJUNCTION

Plaintiff, Phish Inc., having applied *ex parte* against unknown individuals and entities for a temporary restraining order, order permitting civil seizure and order to show cause for preliminary injunction, and the Court having granted the requested relief by Order dated June 26, 2014 (the “Order”), and Plaintiff having served the Summons, Complaint and Order on the defendants named above, and Plaintiff having seized Counterfeit Merchandise (as defined in the Order and below) from said defendants as well as from other unidentified parties who have refused to accept service of process or to identify themselves to Plaintiff (hereinafter collectively the “Defendants”), and, pursuant to the Order, a hearing having been held before the Honorable Alvin K. Hellerstein, United States District Judge, on July 8, 2014, and Plaintiff having appeared through counsel and there being no filings or appearances in opposition by Defendants or any other interested party, the Court on that date having issued a preliminary injunction permitting the seizure of Counterfeit Merchandise (the “Preliminary Injunction”) and

Plaintiff having served the Summons, Complaint and Preliminary Injunction on additional Defendants, and Plaintiff having seized Counterfeit Merchandise from said Defendants, and there having been no answer filed or other appearance by any Defendant.

Upon consideration of Plaintiff's prior application, the memorandum of law and declarations submitted in support thereof, the declaration submitted herewith, and all proceedings herein, the Court finds that Defendants have offered for sale and sold Counterfeit Merchandise and will, unless restrained by this Court, continue to carry out such activities, and there are additional as yet unidentified Defendants who, unless restrained by this Court, will distribute and sell the Counterfeit Merchandise, causing irreparable harm to Plaintiff.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Defendants, and any person acting in concert or participation with them, or any of them, who receives actual notice of this order by personal service or otherwise, are preliminarily enjoined and restrained, during the pendency of this action, from:

(a) manufacturing, distributing, offering or holding for sale, or selling the Counterfeit Merchandise, consisting of any clothing, jewelry, photographs, posters, recordings and other merchandise bearing, without authorization, the trademarks, service marks, likenesses, images or tradenames, or any colorable imitations thereof of the musical group known as PHISH and each of its individual members TREY ANASTASIO, MIKE GORDON, JON FISHMAN, and PAGE MCCONNELL and their federally registered marks: PHISH FOOD, U.S. Registration Number 2173816; PHISH, U.S. Reg. No. 2096010; PHISH, U.S. Reg. No. 2029049; PHISH, U.S. Reg. No. 2029048; PHISH, U.S. Reg. No. 1917861; PHISH, U.S. Reg. No. 1782981; and PHISH and Design, U.S. Reg. No. 1930480; OYSTERHEAD, U.S. Reg. No. 2662635; GAMEHENDGE,

U.S. Reg. No. 2048310; GAMEHENDGE, U.S. Reg. No. 2053513; and WATERWHEEL, U.S. Reg. No. 2247438 (collectively, the “Plaintiff’s Marks”);

- (b) using the Plaintiff’s Marks in any other manner likely to cause confusion, mistake or deception as to the source, sponsorship, endorsement or affiliation of any merchandise; or
- (c) aiding, abetting, encouraging or inducing others to perform or engage in any of the acts enjoined by this preliminary injunction;

AND IT IS FURTHER ORDERED that the United States Marshall or other federal, state or local law enforcement officers, or off-duty officers for any district in which Plaintiff enforces this order, assisted by one or more attorneys or agents of Plaintiff, are hereby authorized to seize and impound any and all Counterfeit Merchandise which Defendants manufacture, distribute, sell, offer for sale or hold for distribution or sale, including from any bag, carton, container, vehicle, or other means of carriage in which the Counterfeit Merchandise is found, from ten (10) hours before to six (6) hours after and within a twenty (20) mile radius of any performance by PHISH on the dates and at the venues set forth below at which PHISH shall be performing:

July 8-9, 2014	The Mann Center, Philadelphia, PA
July 11-13, 2014	Randall’s Island, New York, NY
July 15, 2014	CMAC, Canandaigua, NY
July 16, 2014	DTE Energy Music Theatre, Clarkston, MI
July 18-20, 2014	FirstMerit Bank Pavilion at Northerly Island, Chicago, IL
July 25, 2014	PNC Music Pavilion, Charlotte, NC
July 26-27, 2014	Merriweather Post Pavilion, Columbia, MD
July 29-30, 2014	Ntelos Pavilion, Portsmouth, VA
August 1, 2014	Amphitheater at the Wharf, Orange Beach, AL

August 2, 2014	Oak Mountain Amphitheatre, Pelham, AL
August 3, 2014	Verizon Wireless Amphitheatre, Alpharetta, GA
August 29-31, 2014	Dick's Sporting Goods Park, Commerce, CO
October 17, 2014	Matthew Knight Arena, Eugene, OR
October 18, 2014	Key Arena, Seattle, WA
October 21 - 22, 2014	Santa Barbara Bowl, Santa Barbara, CA
October 24, 2014	Forum, Inglewood, CA
October 25, 2014	Sleep Train Amphitheatre, Chula Vista, CA
October 27 - 29, 2014	Bill Graham Civic Auditorium, San Francisco, CA
October 31 – November 2, 2014	MGM Grand Garden Arena, Las Vegas, NV
December 31, 2014 – January 3, 2015	American Airlines Arena, Miami, FL

AND IT IS FURTHER ORDERED that the bond in the amount of \$100,000, previously posted by Plaintiff, is hereby continued until further order of this Court, to secure payment of such costs and damages not to exceed such sum as may be suffered or sustained by any party who is found to be wrongfully restrained hereby;

AND IT IS FURTHER ORDERED that service of a copy of this amended preliminary injunction together with the summons and complaint in this action be made upon the Defendants at the time the seizure provided herein is effected and that such service shall be deemed good and sufficient, provided that a complete set of all moving papers previously submitted in support of the Order shall be promptly served upon any defendant or counsel requesting same;

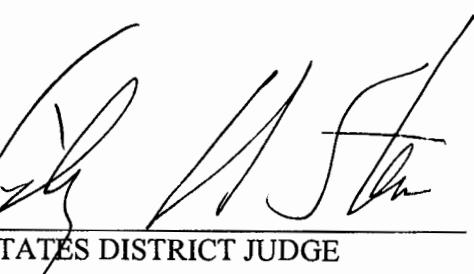
AND IT IS FURTHER ORDERED that a receipt shall be offered to each person from whom Counterfeit Merchandise is seized and that the Plaintiff shall be deemed substitute custodian for all Counterfeit Merchandise seized, which shall be maintained in a secure location pending further order of this Court;

AND IT IS FURTHER ORDERED that Plaintiff shall promptly mail a copy of this amended preliminary injunction to each Defendant previously served with the Order or the Preliminary Injunction who provided a mailing address, and Plaintiff shall be permitted to name as a Defendant in this action any additional person subsequently served with the summons, complaint and this amended preliminary injunction who provides identifying information;

AND IT IS FURTHER ORDERED that any person who is hereafter served with a copy of this amended preliminary injunction who objects to the provisions hereof may submit his or her objections to this Court by answer to the complaint or otherwise moving for relief from this Court pursuant to the Federal Rules of Civil Procedure and the rules of this Court, but no such objection shall serve to suspend this amended preliminary injunction or stay the terms hereof unless otherwise ordered by this Court.

IT IS SO ORDERED.

Dated: October 15, 2014
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UNITED STATES DISTRICT JUDGE

Presented by:

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